



**Mbugua v Echonet Network Africa (Employment and Labour Relations
Petition E064 of 2022) [2024] KEELRC 1964 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1964 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E064 OF 2022**

SC RUTTO, J

JULY 26, 2024

BETWEEN

MARGARET WAIRIMU MBUGUA PETITIONER

AND

ECHONET NETWORK AFRICA RESPONDENT

RULING

1. By a Notice of Motion Application dated 31st May 2024, the Applicant herein seeks an order of stay of execution against this Court's Judgment delivered on 23rd February 2024 pending hearing and determination of the intended Appeal.
2. The Application is premised on the grounds set out therein and on the Affidavit sworn by Teresa Wanja Mwaura on 31st May 2024. Grounds in support of the Application are that the Applicant intends to appeal against the decision of this Honourable Court delivered on the 23rd of February, 2024 and has already filed a Notice of Appeal and applied for typed proceedings within the required time. That further, the Petitioner is likely to move and execute the judgment thus rendering the intended appeal nugatory. It is further stated that the Applicant will suffer loss if a stay of execution is not granted and is ready and willing to provide reasonable security for the Judgment.
3. Opposing the Application, the Petitioner, Margaret Wairimu Mbugua, swore a Replying Affidavit dated 8th July 2024 in which she deposes that she is aware that Teresa Wanja Mwaura is no longer an employee of the Applicant. That this fact leads her to observe the signature in the present Application and compare the same against the signature in the Replying Affidavit to the main Petition and according to her, they are very different. She has good reason to believe that the signatures do not belong to Teresa Wanja Mwaura.



4. She further deposes that the Application by Counsel is dated 31st May 2024 and was filed on 24th June 2024 but only served upon her advocates on record on 4th of July 2024. She contends that the Applicant has been in been in no rush to fast-track the Application.
5. That further, the Notice of Appeal is faulty as counsel for the Respondent indicated that she was the one who was dissatisfied with the judgment of the court and that she was representing her, a position that is incorrect. According to the Petitioner, the Notice of Appeal is incompetent and cannot stand in law *ab initio*.
6. The Petitioner further deposes that it has been four months and two weeks since the Notice of Appeal was filed and served. Her advocate on record advises her, that the *Court of Appeal Rules* provide that a Notice of Appeal is only valid for 60 days and should there be no action on the part of the intended Appellant, it is deemed that the Appellant has withdrawn their appeal.
7. She further averred that upon expiry of the aforementioned days and noting that the counsel for the Appellant was not keen on prosecuting her appeal, her advocate moved to tax her Bill of Costs. The same came up for hearing and parties recorded a consent on 29th May 2024 in open court. At no point did counsel for the Applicant communicate that they were still filing an appeal.

Submissions

8. The Application was canvassed by way of oral submissions. Mr. Museve submitting on behalf of the Applicant, stated that they have filed an Appeal and the same will be rendered nugatory should execution be effected. Mr. Museve further submitted that the Petitioner is likely to execute the Judgment as she has filed a Party and Party Bill of Costs. According to Mr. Museve, the appeal is arguable and the Applicant is ready and willing to furnish security. He urged the Court to allow the Application.
9. Ms. Osore appearing for the Petitioner, argued that the Notice of Appeal is faulty as it indicates that the Appellant is the Petitioner, which is not the case as the Petitioner is her client. She further submitted that there has been no action by the Applicant to prosecute the Appeal and that the Petitioner already filed the Party and Party Bill of Costs. That as of now, six months have lapsed and hence the Applicant is out of time.
10. Ms. Osore further submitted that the Petitioner has information that Teresa Wanja Mwaura who swore the Applicant's Replying Affidavit is no longer an employee of the Applicant. She invited the Court to compare the sample signatures annexed to the Applicant's Replying Affidavit to the Petition and the one annexed in support of the instant Application.
11. It was Ms. Osore's further submission that counsel on record for the Applicant had sought to delay the matter right from the trial stage. She submitted that the Petitioner has a right to enjoy the fruits of her Judgment and that she was amenable to parties agreeing on a payment plan of the decretal amount. Nonetheless, Ms. Osore urged the Court to dismiss the Application.

Analysis and Determination

12. Upon considering the Motion Application before me, the grounds in support thereof and the Response thereto, the issues identified for consideration by the Court are as follows:
 - a. Whether the Applicant's Notice of Appeal dated 23rd February 2024 is proper;
 - b. If the answer to (a) is in the affirmative, whether the Applicant has satisfied the conditions for grant of stay of an order pending Appeal;



13. On the first issue, the Petitioner has averred that the Notice of Appeal is faulty as it indicates that she is the one who is dissatisfied with the Judgment of the court, a position that is incorrect. To this end, the Petitioner has termed the Notice of Appeal incompetent and cannot stand in law ab initio.
14. It is notable that the Notice of Appeal annexed to the Application indicates that it is the Petitioner, Margaret Wairimu Mbugua who is dissatisfied with the Judgment of the Court hence intends to Appeal to the Court of Appeal against the whole of the said Judgment.
15. Rule 75(1) of the *Court of Appeal Rules*, 2010 provides as follows with respect to filing of Notice of Appeals:

“Any person who desires to appeal to the Court shall give notice in writing, which shall be lodged in duplicate with the registrar of the superior court.”
16. My understanding of the aforementioned provision is that a proper Notice of Appeal is one that has been filed by the person who desires to appeal to the Court of Appeal.
17. In this case, the name of the party appearing on the face of the Notice of Appeal in question, is not that of the intended Appellant and specifically, the Applicant who is before this Court now seeking an order of stay of execution pending appeal. It is this Court’s considered view that the said error is very material and renders the Notice of Appeal defective.
18. Indeed, this is an issue that cannot be termed as a typographical error but rather is a substantive issue as it discloses a wrong intended Appellant contrary to Rule 75(1) of the *Court of Appeal Rules*. This is an issue that cannot be wished away.
19. In the case of the *County Government of Meru. v Leopard Rock Mico Limited* (Civil Application E011 of 2021) [2022] KECA 462 (KLR) (18 March 2022) (Ruling), the Court of Appeal observed as follows:

“In so far as a proper Notice is a jurisdictional pre-requisite, nothing flows from a defective notice to invoke this Court’s jurisdiction to grant orders sought pursuant to Rule 4 or any other Rule. In effect, its hands are tied, so to speak. I so hold cognizant of the general principle that it is only in exceptional circumstances that this Court would raise its hand to slam shut the door to justice on the face of a litigant despite the constitutional guarantee of access to justice as enshrined in Article 48.”
20. Applying the above determination to the case herein, it is this Court’s respectful view that as couched, the Notice of Appeal dated 23rd February 2024 is defective and nothing flows from such a notice to invoke this Court’s jurisdiction to grant the orders sought in the instant Application.
21. Having found that the Notice of Appeal on which the instant Application is anchored, is defective, I find and hold that I have no jurisdiction to determine the Applicant’s Motion dated 31st May 2024 or grant any of the orders sought.
22. Having so found, it is not logical to address the remaining issue.

Orders

23. In view of the foregoing reasons, the Application dated 31st May 2024 is disallowed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JULY 2024.



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STELLA RUTTO

JUDGE

In the presence of:

Mr. Museve for the Respondent/Applicant

Ms. Osore for the Petitioner/Respondent

Millicent Kibet Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

